

**UNITED STATES DISTRICT COURT
DISTRICT COURT OF MARYLAND**

DEBORAH K. CHASANOW
UNITED STATES DISTRICT JUDGE

6500 Cherrywood Lane
Greenbelt, MD 20770
(301) 344-0634

August 2, 2022

TO: Counsel

RE: Anna Borkowski v. Baltimore County, Maryland, et al.
Civil Action No. DKC 18-2809

Dear Counsel:

As promised, I am providing the list of cases that I found helpful in thinking about the jury instructions, and a basic framework for the retaliation claim.

U.S. v. Alvarez, 567 U.S. 709 (2012)

Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977)

Martin v. Duffy, 977 F.3d 294 (4th Cir. 2020)

Greenwich Citizens Committee, Inc. v. Counties of Warren and Washington Industrial Development Agency, 77 F.3d 26 (2^d Cir. 1996)

Garcia v. City of New Hope, 984 F.3d 655, 669-70 (8th Cir. 2021)

Cruise-Gulyas v. Minard, 918 F.3d 494, 497-98 (6th Cir. 2019)

Penley v. McDowell County Board of Education, 876 F.3d 646, 654, 657 (4th Cir. 2017)

In order to prove her claim, Ms. Borkowski must establish by a preponderance of the evidence each of the following elements:

A. That Ms. Borkowski engaged in conduct that was protected by the First Amendment;

B. That, following that conduct, a Defendant took an adverse action against her; and,

C. That intent to retaliate was a motivating factor for that Defendant's decision to take adverse action.

The first element, conduct protected by the First Amendment, includes appearing before a District Court Commissioner and providing sworn testimony in support of seeking criminal charges.

The second element, adverse action, is action that would tend to discourage a reasonable person's exercise of First Amendment rights.

The third element of Plaintiff's claim is that intent or motive to punish her for exercising her First Amendment right was a motivating factor in the Defendant's decision to take adverse action against her. A motivating factor is one that plays a substantial or important part in the decision. It need not be the only factor. A defendant may have taken action for many reasons. But if one of those reasons was intent to punish Plaintiff for exercising First Amendment rights, and if that reason played a substantial part in the Defendant's decision to take action against Plaintiff, then Plaintiff has satisfied the third element.

Even if Plaintiff has proven that intent to punish her for exercising a First Amendment right was a motivating factor in the Defendant's decision to take adverse action against her, the Defendant can escape liability if he or she can prove, by a preponderance of the evidence, that he or she would have made the same decision to take the action even without any intent to punish Plaintiff.

Very truly yours,

/s/

DEBORAH K. CHASANOW
United States District Judge